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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,131	12/05/2003	Eugenio Bortone	CFLAY.00222	8987

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EXAMINER	
EASHOO, MARK	

ART UNIT	PAPER NUMBER
1732	

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/729,131	BORTONE, EUGENIO	
	Examiner	Art Unit	
	Mark Eashoo, Ph.D.	1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 January 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed 12-JAN-2004 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. Accordingly, it has been placed in the application file and the information referred to therein has been considered as to the merits. However, it is noted that a copy of JP 62029936 A does not appear in the Office's file and therefore has not been considered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4 and 9-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 14-25 of U.S. Patent No. 6,770,233. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 6,770,233 teach a contact (ie. a restriction or resistance) to an extrudate applied by air/gas flow inside a tubular containment vessel thereby forming a braided/coil extrudate. Although U.S. Patent No. 6,770,233 does not specifically teach that the contact is made downstream of the point wherein the extrudate exhibits a temperature below its glass transition temperature, it would have been an obvious choice to make it so, if not inherent therein, if not inherent therein, in order to form the extrudate into a desired shape rather than have the extruded material flow around the flapper.

Claims 1, 2, 4-7, 9-11 and 13-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 14-20 of U.S. Patent No. 6,607,772. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of U.S. Patent No. 6,607,772 teach air flow contact (ie. a restriction or resistance) to an extrudate applied by a flapper inside a tubular containment vessel thereby forming a curly/spiral extrudate. Although U.S. Patent No. 6,607,772 does not specifically teach that the contact is made downstream of the point wherein the extrudate exhibits a temperature below its glass transition temperature, it would have been an obvious choice to make it so, if not inherent therein, in order to form the extrudate into a desired shape rather than have the extruded material divided or aerated by the air/gas flow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Meier-Kaiser (US Pat. 6,680,022).

Meier-Kaiser teaches the claimed extrusion process comprising a step of: applying a resistance to an extrudate downstream of the point wherein the extrudate exhibits a temperature below its glass transition temperature in a containment device (Fig. 1). It is inherent that the extrudate is cooled to a point wherein the extrudate exhibits a temperature below its glass transition temperature within the calibration device in order to form the final desired shape of the extrudate because if not so, then that extrudate would tend to flow, to some degree, under its own weight after leaving the calibration device and therefore destroying the purpose of the device.

Meier-Kaiser also teaches that: a tubular containment device (Fig. 1); a resistance, of some degree, provided by a flapper or flexible seal which forms a restriction (Fig. 1, element 7); a vacuum (3:25-35); cooling by convection (ie. cooling gas) (3:40-50); and a axially aligned containment device (Fig. 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Meier-Kaiser (US Pat. 6,680,022).

Meier-Kaiser teaches the basic claimed process as set forth above. Meier-Kaiser does not teach a plurality of dies and corresponding containment vessels attached to an extruder face. Nonetheless, Official Notice is given that separating the extrudate (ie. divided flow) into smaller product streams is well known in the art. At the time of invention a person of ordinary skill in the art would have found it obvious to have divided the extrudate flow stream into smaller product stream, as commonly practiced in the art, in the process of Meier-Kaiser, in order to provide increased linear output from a single extruder (ie. economy of scale).

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaianni can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Eashoo, Ph.D.
Primary Examiner
Art Unit 1732

August 31, 2005
me

31/Aug/05